

8 Official Opinions of the Compliance Board 173 (2013)

◆ Minutes – Generally

- ◇ Minutes to be prepared “as soon as practicable”
- ◇ When prompt adoption of minutes is impracticable through no fault of the public body, public body should provide meeting information in another form

*Topic headings correspond to those in the Opinions Index (2010 edition) at <http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

May 15, 2013

Re: Maryland State Water Quality Advisory Committee
(*M.J. Fluss, Complainant*)

We have considered the allegations by Michele J. Fluss (“Complainant”) that the Maryland State Water Quality Advisory Committee (“SWQAC”) routinely violates the Open Meetings Act (the “Act”) by adopting the minutes of its meetings too slowly.

State Government Article (“SG”) § 10-509(b) requires a public body to have its written minutes prepared “as soon as practicable.” In applying that standard, the only line that we have drawn is that “routine delays of several months or longer” do not comply with the Act. 7 *OMCB Opinions* 237, 240-41 (2011). Bodies that only meet quarterly, we have reluctantly advised, should adopt their minutes by circulating them—reluctantly, because we do not encourage bodies to take actions that way and do not condone the practice for other actions. See 8 *OMCB Opinions* 125, 126 (2013).

Here, all apparently agree that SWQAC routinely adopts the minutes of each meeting at its next meeting, and, further, that SWQAC usually meets every other month. So, when everything goes as planned, it takes SWQAC about eight weeks to adopt its minutes. Complainant points out that SWQAC’s 2012 meetings occurred from eight to ten weeks apart, and once eighteen weeks apart; two meetings in 2013 occurred seven weeks apart. She contends that each “lag time” violated the Act. The delay in access to the minutes, she states, has prevented her from “gain[ing] an appreciation of issues under discussion in a reasonable manner because [SWQAC] excessively delayed approval”¹ In a reply to SWQAC’s

¹ Complainant has complained about the timeliness of a public body’s adoption of minutes in several complaints over the last eighteen months. See 8 *OMCB Opinions* 32 (2012), 8 *OMCB Opinions* 111 (2012), 8 *OMCB Opinions* 125

response, she suggests that our opinion in 7 *OMCB Opinions* 8 (2010), which involved a different public body, establishes that SWQAC violated the Act. She quotes that opinion for the proposition that “insufficient staff or competing priorities” are not “excuses for not complying with the Act.”

In essence, then, Complainant asks us to declare that a public body that meets once every two months violates the Act by adopting its minutes at each successive meeting, without regard to facts regarding “staff or competing priorities.” We will not do so. As we have explained before, the General Assembly chose to set a flexible standard, not a rigid one, and that standard requires us to consider, for the claimed delays, whether the particular public body had its written minutes prepared “as soon as practicable.” That standard accounts for the fact that the Act applies to a broad range of public bodies, from those staffed on a full-time basis to those without any staff at all: a set deadline that is “practicable” for one public body might be impracticable for another. With that, we turn to the facts provided by SWQAC’s Chair on whether it adopted its minutes “as soon as practicable.”

SWQAC is a 34-member body that advises the Maryland Departments of the Environment (“MDE”) and Natural Resources (“DNR”) on various water quality issues. It has no administrative staff of its own. MDE provides “less than 5%” of the time of an administrative specialist, and DNR provides “less than 3%” of the time of a staffer to administer the SWQAC website. We translate the administrative staffer’s time to less than 2 hours per week. That staffer, the Chair explains, prepares draft minutes within two or three weeks after each meeting, circulates them to the Chair and Vice Chair, and, when those officers have questions about a topic, sends the draft minutes to the member most knowledgeable about that topic. After receiving those people’s suggested changes, the staffer prepares the final draft and sends it to the members for their review, usually about a week or a week and a half before the next meeting. The Chair states that it is SWQAC’s policy to provide draft minutes upon request and that SWQAC prefers to continue to take action on its minutes “in person.” The Chair explains that SWQAC has “made it a practice to conduct its meetings and discuss issues” that way and that SWQAC “has not conducted business or voted on matters via email.”

Given SWQAC’s particular circumstances, we find that its routine of adopting the minutes of each meeting at the next meeting, approximately eight weeks later, does not violate the Act. Of course, in an ideal world, every public body would be sufficiently funded and staffed and thus able either to stream its meetings online or to produce and adopt written minutes

(2013). Like the staff of the public body at issue in 8 *OMCB Opinions* 32, SWQAC staff provided Complainant with detailed draft minutes. Here, staff e-mailed them to Complainant three business days after she requested them. While minutes are not “minutes” until they are approved, it is not at all clear that Complainant was denied timely access to information about the activities of this public body.

quickly. When the ideal fails to materialize through no fault of the public body, we suggest accommodations. The member of the public who wants to know quickly what happened at a meeting might attend the meeting, or accept draft minutes, or ask a participant for details. A public body that might need to delay a regular meeting by weeks or months, or a public body that meets rarely, should proceed under 8 *OMCB Opinions* at 126, as cited above.

We are aware of instances in which public bodies have intentionally prolonged the “draft” status of minutes and declined to disclose them, allegedly in order to avoid publicity or delay public action on an issue. This is not such a case. We are aware that many public bodies have control over their staffing and thus over the production of their minutes. This one does not. In light of SWQAC’s current circumstances, we find that its routine for adopting minutes substantially complies with the standard set by the Act.

Open Meetings Compliance Board

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